IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 546 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GEB

Versus

BALLKHAN D JOYA

Appearance:

MR RC JANI for Petitioner

MR DG CHAUHAN FOR Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 14 and 226 of the Constitution, at the instance of the Gujarat Electricity Board, challenging the judgement and award passed by the Labour Court, Kalol in Reference (LCK) No.22/86.

2. I am conscious of the limitations of this court while dealing with petitions under Article 227 of the Constitution of India, wherein findings of fact recorded

by the lower courts on the basis of appreciation of evidence on record cannot lightly be interfered with. However, as I shall discuss hereinafter, there is no serious controversy as to the facts established on record, but the Labour Court has in interpreting the facts, added its own grossly exaggerated twist arising from its own compassionate view in the matter which has resulted in a miscarriage of justice. In my view, therefore, the impugned award requires to be interfered with.

3. The respondent worked with the petitioner for two different periods and in two different capacities, as will be discussed hereinafter. There is no controversy that these two periods when he put in service were distinctly different and not contiguous to each other and that he had worked on different posts, in different capacities, during each of these periods. Nevertheless the Labour Court merely out of sympathetic considerations has clubbed the said two periods together with a view to create a more apparently reasonable case for the respondent.

4. The respondent was first engaged by order dated 30th July 1979 as a work-charge labourer, on a purely temporary basis and on a purely temporary post for a specific period of not exceeding 119 days. There cannot be any controversy on this fact in view of the appointment order at Exh.22 on record. Obviously this was a tenure appointment, on a temporary post, and when this tenure expired, the respondent was relieved on 29th November 1979. Obviously, therefore, this cannot give rise to any grievance on the part of the respondent, and this period of a specific tenure appointment for a temporary purpose and on a temporary post cannot be clubbed with any other appointment in any other capacity.

5. Thereafter the petitioner and the respondent being in agreement, the respondent was appointed as an Apprentice Trainee for training under the Apprentices Act, 1961, for the purpose of undergoing training as Apprentice Lineman. In this context the letter of appointment dated 19th February 1981 at Exh.23 specifically makes it clear that the respondent was selected as Full Term Apprentice for training in the trade of Apprentice Lineman for a period of three years on the terms and conditions mentioned in the said letter.

5.1 Condition No.2 of the said letter of appointment specifically mentions that the engagement of the respondent as an Apprentice in the trade of Apprentice

Lineman is subject to registration of the contract by the Apprenticeship Adviser and subject to medical fitness as prescribed by the Act. Condition no.6 also specifies that the respondent shall have to execute a contract in the Model Contract Form to undergo apprenticeship training for a period of 3 years from the date of joining and that the respondent will be governed by the terms and conditions of the contract so executed.

6. There is no dispute on the fact that the respondent was appointed on 19th February 1981 as per Exh.23, and that the respondent had in fact executed the Apprenticeship Contract with the petitioner as per Model Contract Form. It is important to note that once such a contract is executed, the parties would be governed by a specific relationship created by the contract, subject always to the operation of the Apprentices Act, 1961.

6.1 However, as it transpired, when the said contract was sent for registration as required under the provisions of the Apprentices Act, 1961, the Director of Employment and Training returned the said contract by communication dated 15th October 1981, whereby the said contract was refused to be registered, on the ground that the respondent did not possess the necessary educational qualifications. There is no dispute that the respondent did lack the necessary educational qualifications.

6.2 Since in the view of the petitioner the contract could not be registered, and the Apprenticeship training under the Act could not be continued, the entire exercise was frustrated, and the petitioner, therefore, terminated the respondent on 21st November 1981.

7. The respondent thereafter by way of the present reference contended that he could not have been terminated without notice, and without due compliance with the provisions of section 25-F of the Industrial Disputes Act on the ground that he was a "workman" within the meaning of section 2(s) of the I.D. Act, that he had put in more than 240 days while working under the contract and for this reason also he could not have been terminated in violation of section 25-F, etc.

8. Looking to the pleadings of the parties and the oral evidence on record, the crux of the matter appears to be as to what was the status of the respondent while he was under training. The question would be whether he would be a "workman" within the meaning of section 2(s) of the I.D. Act or he would be a mere trainee, whether under the Apprentice act, 1971 or otherwise (under the

contract).

9. The fact remains and which fact is not in dispute is that once the contract is refused to be registered, the person who is otherwise entitled to all the benefits of this Act as an Apprentice, would be deprived of this benefit and/or rights and obligations. He can no longer then be treated as an Apprentice under the Apprentices Act, 1961.

10. However, what cannot be ignored and what cannot be denied is that it was merely the refusal of registration of the contract which deprived the respondent of what otherwise would have been his status as an Apprentice under the said Act, and this was as late as 15th October 1981. We also cannot ignore the fact, and on this fact there is no controversy, that from 19th February 1981 till 21st November 1981, both the petitioner and the respondent had governed themselves and dealt with each other as if the respondent was an Apprentice within the meaning of the said Act. The question then which requires consideration is whether the refusal of registration would retrospectively wipe out the relationship between the parties, which relationship both the parties had, during the tenure of this relationship, accepted as an Apprentice under the said Act.

11. It is pertinent to note that under section 18 of the Apprentices Act, 1961, every Apprentice undergoing Apprentice training shall be a trainee and not a worker, and the provisions of any law with respect to labour shall not be applied to or in relation to such Apprentice. Thus, during the tenure of service, when the parties both conducted themselves as if the respondent was an Apprentice under the said Act, certainly the respondent was treated as a trainee and not as a worker, and obviously it was not considered by either parties that provisions of I.D. Act would apply. If subsequently the contract is refused to be registered, and the relationship which the parties professed between themselves is brought to an end, would the I.D. Act then apply retrospectively to such a period?

11.1 In my opinion the questions which arise in the present petition can best be answered by considering not merely the pure and abstract application of law, but what was the intention of the parties, how the relationship was perceived by each in respect of the other while that relationship was alive and not after it was frustrated by refusal of registration of the contract.

12. There cannot be any dispute that the respondent was certainly a trainee, and was undergoing training in the trade of Lineman, whether he was ultimately qualified to be called an Apprentice within the meaning of the Apprentices Act, 1961 or not. In other words, during the tenure of his service the respondent was certainly an intended "trainee", but not an intended "worker" or intended "workman".

12.1 The facts which have been brought out in the cross-examination of the respondent (Exh.13) also support the above view. In his cross-examination the respondent has admitted that he had applied to be engaged as an Apprentice, that his letter of appointment by the petitioner Board was as an Apprentice, that he has passed only 8th standard, that the contract was sent for registration under the Act, that the contract was refused to be registered and returned because he had not passed 9th standard and that during the period from 19th February 1981 to 21st November 1981 he was engaged as an Apprentice.

12.2 Thus, the net sum and substance of this entire evidence is, in my view, that during the period when the respondent was engaged by the petitioner, he was engaged as an Apprentice, and that status of the respondent as an Apprentice under the Apprentices Act, 1961 subsequently came to be frustrated by refusal of registration of the contract. As aforesaid, even the oral evidence of the respondent himself is strongly indicative of the relationship between the parties. In my view, even if this relationship cannot strictly be called "an Apprentice" within the meaning of the Apprentices Act, 1961, there cannot be any dispute that the respondent was a trainee and nothing more. Obviously since the Apprentices Act, 1961 would not apply to the facts of the case since the contract has not been registered, section 18 of the said Act may not apply with full force. However, one can certainly draw a parallel from the said section with a view to come to a conclusion that any person who is engaged as a trainee, with the intention of training him under the provisions of the said Act, shall be a mere trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such trainee.

12.3 It must also be noted that refusal of the registration of the contract merely excludes the application of the said Act to the parties. However, merely on this account, the contractual relationship

between the parties created by this mutual covenant (within the meaning of the Contract Act) is not in any manner abrogated.

13 In this context learned counsel for the petitioner seeks to rely on a decision of the Supreme Court in the case of Employees State Insurance Corporation Vs. Tata Engg. & Co. (AIR 1976 SC 66). In para 6 of the said decision the Supreme Court has observed as under:

> "The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remains a learner and is not an employee."

13.1 To my mind, the aforesaid observations clearly lay down the foundation of the relationship between the parties. In my view, whether the trainee is a mere trainee under a personal contract (dehors the Apprentices Act), or is an apprentice within the meaning of the said Act, makes no difference. So long as a trainee is engaged by the employer for the purpose of imparting training, this dominant purpose and object, and the basic intention behind such an engagement, cannot be frustrated by refusal of registration of a contract under the said Act.

13.2 In paragraph 7 of the decision of ESI Corporation (supra), the Supreme Court, after examining the relevant provisions of the Apprentices Act, 1961, had occasion to observe as under:

> "It is, therefore, inherent in the word "apprentice" that there is no element of employment as such in a trade or industry but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training, is not relevant for the purpose of comprehending the content of the term."

13.3 The Supreme Court had occasion to make further observations in the aforesaid case at para 11 as under:

> "From the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company."

13.4 It requires to be noted that the decision of the Supreme Court in the case of ESIC (Supra) was in the context of section 2(s) as found in the I.D. Act, 1947, wherein the relevant phrase which was under consideration was "and includes any apprentice".

14. As against the above, learned counsel for the respondent seeks to rely upon a decision of the Madras High Court in the case of Madras Aluminium Company Ltd. Vs. Labour Court, Coimbatore and Another, reported at 1992(1) LLN 1047. This is a decision based on an interpretation of section 2(s) of the Industrial Disputes Act, and holds that a trainee is a workman and that the termination of his service at the end of period of training without any enquiry or notice is illegal. However, what cannot be ignored is that this is a decision based on a joint interpretation of section 18 and 22 of the Apprentices Act, 1961 and Rule 5 of the Apprentices Rules, 1961. Strictly speaking since the respondent was not an Apprentice within the meaning of the said Act, this decision would have no direct application of the facts of the case.

15. In the premises aforesaid, I am of the opinion that the Labour Court was clearly in error in clubbing the two periods of the employment together and deciding the reference in favour of the respondent on irrelevant considerations. One of such irrelevant considerations which has weighed with the Labour Court is to the effect that once a person is engaged as a helper, he cannot be engaged as a trainee once again. This observation is made without taking into consideration the fact that he was engaged as a helper on a temporary post for a specific period, whereas for the subsequent period he was specifically engaged as a trainee. The Labour Court has also drawn an unwarranted conclusion that the respondent was engaged as a trainee and the apprenticeship contract

was for the same purpose for which the respondent was earlier engaged as a helper. There is absolutely no warrant for such a ridiculous conclusion. The Labour Court has also, in order to justify its conclusions, completely misread the documentary evidence on record. In the context of Exh.22, where the respondent was appointed as a helper on a purely temporary basis for a specific period not exceeding 119 days, which is apparent on the face of the document, the Labour Court observes that the appointment letter does not show that the respondent was engaged on a temporary basis. The Labour Court then compounds this error by further holding that there is no documentary or oral evidence to show as to how temporary was the post, or for what purpose the post was created. What the Labour Court did not realise is that once it is established that the former appointment was for a specific tenure, other considerations as to why the post was temporary and for what purpose such a temporary post was created are irrelevant considerations.

16. In the premises aforesaid, I find that the impugned judgement and award are totally unsustainable and are required to be quashed and set aside. It is accordingly so directed. Consequently this petition is allowed. Rule is made absolute with no order as to costs. D.S. permitted.

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